

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ESTATE OF BRIAN DUFFY,

Plaintiff,

- against -

HARD ROCK CAFE INTERNATIONAL (USA), INC.

Defendant.

Docket No. 17-cv-06624

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Estate of Brian Duffy (“Duffy” or “Plaintiff”) by and through its undersigned counsel, as and for its Complaint against Defendant Hard Rock Cafe International (USA), Inc. (“Hard Rock” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyright photograph of English singer and song writer David Bowie, owned and registered by Duffy. Accordingly, Duffy seeks injunctive and monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or is transacting business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Duffy was a renowned fashion and portrait photographer. He was included in the 2013 Professional Photographer list of the 100 most influential photographers of all time. His work has been featured in galleries and exhibitions around the world including the Chris Beetles Gallery in London, the Alanari Photo Museum in Florence, the Monash Art Gallery in Australia, and the Centro De Historias Museum in Spain.

6. Upon information and belief, Hard Rock is a foreign business corporation duly organized and existing under the laws of the State of Florida, with a place of business at 1501 Broadway, New York, New York 10036. Upon information and belief, Hard Rock is registered with the New York Department of State, Division of Corporations to do business in the State of New York. At all times material hereto, Hard Rock has owned and operated the Hard Rock Hotel in Palm Springs, California (the “Hotel”). At all times, material hereto, Hard Rock has owned and operated the URL: www.HRHPalmSprings.com and has operated their Twitter account www.Twitter.com/HRHPalmSprings (the “Websites”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

7. Duffy took a portrait of legendary singer and songwriter David Bowie which appeared on the front cover of Bowie’s Aladdin Sane album (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Duffy is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph is registered with the United States Copyright Office and was given registration number VA 1-428-937.

B. Defendant's Infringing Activities

10. Upon information and belief, Hard Rock copied the Photograph and placed it throughout the Hotel including but not limited to in the front entrance of the Hotel when guests arrive and in the Hotel guestrooms. True and correct copies of the Photograph throughout the Hotel and copies of the Photograph on the Websites are attached hereto as Exhibit B.

11. Hard Rock did not license the Photograph from Plaintiff nor did Hard Rock have Plaintiff's permission or consent to publish the Photograph in its Hotel or Websites.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST HARD ROCK)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Hard Rock infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph throughout the Hotel and Wesbite. Hard Rock is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Hard Rock have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

17. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

18. Plaintiff further is entitled to its attorney's fees and full costs pursuant to 17 U.S.C. § 505.

19. Defendant's conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a permanent injunction prohibiting infringement of Plaintiff's copyright and exclusive rights under copyright.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Hard Rock be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Defendant be enjoined from copying, reproducing, distributing, adapting, or publically displaying Plaintiff's Photograph pursuant to 17 U.S.C. § 502;
3. Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;

4. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
5. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
6. That Plaintiff be awarded pre-judgment interest; and
7. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
August 30, 2017

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